

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:[REDACTED]:TL-N-5295-00
[REDACTED]

date:

to: [REDACTED] Team Manager
LMSB: Manufacturing, Construction & Transportation
Group [REDACTED] Attn: [REDACTED]
Team Coordinator

from: [REDACTED]
Associate Area Counsel (LMSB)

subject: [REDACTED]
Authority to Sign and Language for Restricted Consent

THIS DOCUMENT INCLUDES STATEMENTS SUBJECT TO THE ATTORNEY-CLIENT PRIVILEGE AND THE ATTORNEY WORK PRODUCT PRIVILEGE. THIS DOCUMENT SHOULD NOT BE DISCLOSED TO ANYONE OUTSIDE THE IRS, INCLUDING THE TAXPAYER INVOLVED. LIMIT USE OF THIS DOCUMENT TO THOSE WITHIN THE SERVICE WORKING ON THIS CASE. THIS DOCUMENT IS SUBJECT TO I.R.C. § 6103.

This is in response to your request of November 8, 2000 for legal advice concerning who has the authority to sign consents to extend the statute of limitations and for proposed language to use in Forms 872 to limit the statute extension to the ITC and related issues.

You are seeking to extend the statute of limitations for the taxable years [REDACTED], [REDACTED] and [REDACTED], which are currently due to expire on [REDACTED]. During those years, [REDACTED] was the parent company of a consolidated group. One of the [REDACTED]% subsidiary corporations in the [REDACTED] group was "[REDACTED]". Prior consents to extend the statute of limitations had been set up in the name of "[REDACTED] [REDACTED] formerly [REDACTED] [REDACTED]" and signed by the designated person. In

██████████ the company undertook a D reorganization (downstream merger) in which ██████████ stock was issued to former ██████████ shareholders, in exchange for their ██████████ stock. ██████████ then became the parent of the consolidated group and ██████████ became a subsidiary. ██████████ then engaged in a merger with ██████████ in ██████████. ██████████ survived the merger and became parent of the new consolidated group. Former ██████████ shareholders were given cash and ██████████ stock in exchange for their shares in ██████████.

You have asked us to determine who is authorized to sign consents to extend the statute of limitations for the tax liability of ██████████ during the taxable years ██████████ through ██████████.

We have determined that either ██████████ or ██████████ is authorized to extend the statute of limitations. Under Treas. Regs. Section 1.1502-77T(a)(4)(iv), ██████████ as the common parent of the group at the present time (the time the waiver is to be given) is authorized to sign on behalf of ██████████. Also, under Treas. Regs. Section 1.1502-77T(a)(4)(i), ██████████ is authorized to sign the consents as the common parent of the group during the years to which the waiver applies. This is true because ██████████ is still in existence as the same company, using the same EIN, even though ██████████ is now a subsidiary of ██████████. Although either ██████████ or ██████████ is authorized to sign the consents, you have indicated that you prefer to have ██████████ sign them, since you are dealing with ██████████ personnel in the present audit of the claim for refund. As stated above, ██████████ is authorized to sign the Forms 872.

We recommend, however, that you make sure that the person who signs the Forms 872 on behalf of ██████████ has the authority to do so. You have indicated that you will obtain a copy of such authorization, in writing, from the Board of Directors of ██████████. We agree that such a signed authorization would be sufficient.

You also asked us if the statute of limitations would remain open under Section 1311 because the decreases to basis and depreciation would only be made if part of the taxpayer's claim for refund was allowed. It is not necessary to address this question. Since the statutes of limitation have not yet expired and you plan to obtain valid consents to extend them, an argument that the statute of limitations would remain open under Section 1311 need not be considered.

Concerning your request for proposed language, you have advised us that you recognize that, as a policy matter, the IRS does not generally enter into limited consents. In this case, however, the taxpayer is requesting a limited consent because the years at issue have already been audited, been through Appeals and had a refund approved by the Joint Committee. The taxpayer does not wish to risk exposure for additional issues. You have advised us that the only issue open in this case is the investment tax credit issue, the examination has been completed and no further issues, other than the claim for ITC, will be considered. Thus, we suggest the following language for use in the Forms 872 to limit the statute extension to the ITC and related issues (including any resulting decreases to basis and depreciation):

The parties agree to extend the statute of limitations for assessment only for issues related to and flowing from the taxpayer's claim for additional investment tax credit, including but not limited to the investment tax credit, decreases in the basis of assets upon which the claim for investment tax credit is based and decreases in depreciation as a result of the claim for additional investment tax credit.

A copy of this memorandum is being forwarded to our national

office for post-review pursuant to our manual Section (35)3(19)4.
If our national office makes any significant changes to our
advice, we will notify you within ten business days

Please feel free to contact Attorney [REDACTED] at ([REDACTED])
[REDACTED] if you have any further questions regarding this matter.

[REDACTED]
Associate Area Counsel (LMSB)